IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1246 OF 2004

Maruti Prabhu Mule .. Appellant

Versus

Sunita Maruti Mule .. Respondent

Mr.Vilas B. Tapkir for appellant

Mr.Satyajit Rajeshirke for respondent

CORAM : P.V.KAKADE, J.

DATE : 16TH JUNE, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Solapur dismissing the appellant's Civil Appeal No.257 of 2003 and upholding the judgment and order passed by Civil Judge, Sr.Division, Solapur dismissing the appellants petition for diverse by order dated 30.7.2003.

2. The petitioner-appellant had filed Petition under Section 13(1)(i-a) of Hindu Marriage Act, 1955 for divorce on the ground of mental and physical cruelty. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the petitioner-appellant had failed to prove that respondent - wife had treated him with cruelty. It was further held that the respondent-wife had proved that petitioner-appellant had deserted her since more than two years without any reasonable excuse or cause prior to the petition. On such other ground the petition came to be dismissed. The appeal was preferred in the District Court. The learned lower Appellate Court Judge after hearing both the parties confirmed the findings of the lower court and dismissed the appeal.

3. I have heard the learned counsel for both the parties. Perused the record.

4. The only point sought to be raised by the appellant in this appeal is that the respondent had filed Criminal Case No.124 of 2001 against him, his mother and brother in the Court of J.M.F.C. Mohol under

section 498-A, 323 read with sec.34 of I.P.C., which according to him amounted to cruelty and on such ground it was submitted that the decree for divorce on that ground should have been granted by both the courts below. However, it is clear from the record that the petitioner was acquitted and others were also acquitted by giving benefit of doubt and not by holding that the complaint was false. The learned counsel for the appellant sought to rely upon the Supreme Court ruling in the case of **G.V.N. Kameswara Rao vs. G.Jabilli** reported in **(2002) 2 SCC 296** wherein it was held that false police complaint and consequent loss of reputation and standing in society at the instance of one's spouse, would amount to cruelty. In the present case the findings recorded by the criminal court never show that the wife's complaint is for mental cruelty. In other words the appellant was given the benefit of doubt. Be as it may, the fact remains that there is no substantial question of law involved in the present case and as such the appeal stands dismissed with no order as to costs.

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